IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6137 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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S T SHAH & 5 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR BJ JADEJA for Petitioner(s) : 1 - 3, 3.2.1,3.2.2 - 5.
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/09/2005

ORAL JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment

and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 1-9-90 / 30.1.1990 passed in Revision Application No.1 of 1989 in dismissing the same and confirming the order passed by the Collector, Surendranagar dated 25th February, 1989 passed in Gharkhed Ordinance Revision Application No.2 of 1986, by which, the Collector, Surendranagar has quashed and set aside the order passed by the Deputy Collector, Dhangadhra dated 27th May, 1973 in confirming the sale transaction in favour of the petitioners.

2. It is the case of the petitioners that the petitioner No.1 made an application before the Deputy Collector, Dhangadhra to purchase the agricultural land for personal cultivation and thereupon the Deputy Collector, Dhangadhra granted the requisite sanction by his order dated 21.2.1965 under the provisions of Section-54 of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance of 1949 (hereinafter referred to as “the Ordinance” for short) read with Rule-18 of the Rules made under the said Ordinance and on the basis of the said

sanction, the petitioner No.1 purchased the land bearing Survey No.1012 admeasuring Acres 6 – 10 Gunthas from one Vankar Karsan Ganga of village Dasada. It is the case of the petitioner No.1 that after he purchased the land as above in the year 1965, he had purchased the other lands at other village also and transferred some of his lands in favour of the petitioner Nos.2, 3, 4 & 5, whereas, the petitioner No.2 had transferred the land to his minor son petitioner No.6. It appears from the record that thereafter the proceedings were started in the year 1970-71 against the petitioners under Section-75 of the Ordinance read with Section-54 of the Ordinance by the Deputy Collector, Dhangadhra by alleging interalia that the petitioner had transferred the said lands bearing Survey No.103 of village Khetasar to his brother Lilachand Tokarshi by partition. It appears that similarly it was alleged that the petitioner No.1 has transferred the lands bearing Survey Nos.903 and 487 to his father Takarshi Amrutlal and it was alleged that and the said Tokarshi Amrutlal was not an agriculturist and the said transfer was in breach of Section-54 of the

Ordinance. Both the aforesaid notices were issued calling the petitioners to show cause why transfer should not be declared invalid and the land should not be forfeited to the State Government. In the mean while, the petitioners Nos.1 & 2 preferred the Special Civil Applications Nos.527 and 528 before this Court and the proceedings were stayed, however, said Special Civil Applications came to be withdrawn and thereafter, the Deputy Collector recorded the evidence and after hearing both the parties passed the order on 29-5-76 discharging the notices. It appears from the record that thereafter the Collector, Surendranagar exercising the suo motu powers under Section-211 of the Act by registering the case being Revision No.205 of 1982 and set aside the order passed by the Deputy Collector dated 29.5.1973 by his order dated 30.4.84. It appears from the record that being aggrieved and dissatisfied with the order passed by the Collector, Surendranagar, the same is challenged before the Secretary (Appeals), Revenue Department, State of Gujarat by way of Revision Application No.447 of 1984 and the matter came to be remanded by order dated 24.9.84 on the

ground that the question “whether transfer made by the petitioner No.1 in favour of his father and brother would offend the provisions of Section-54 of the Ordinance or not ?” was the question of Government Policy and therefore, the matters should be referred to the Government for obtaining the orders. It appears that after remand, the Collector, Surendranagar registered case as Gharkhed Ordinance Revision Case No.2 of 1986 and reference was made to the State Government earlier and the State Government by its letter dated 1.1.1985 directed that the petitioner No.1 was required to obtain sanction before transferring the land to his brother and the father as they would not be included in the definition of “joint family” provided in the Ordinance. Accordingly, the Collector started the proceedings being Gharkhed Ordinance Revision Case No.2 / 1986 and passed the order dated 25.2.1989 setting aside the order dated 25.9.73 passed by the Deputy Collector, Dhangadhra and directed to take entries regarding these transactions in review and for passing appropriate orders. Being aggrieved and dissatisfied with the orders passed by the Collector,

Surendranagar dated 25.2.89, the petitioners preferred the Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.1 of 1989, and the Deputy Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 30th January, 1990 dismissed the said revision application confirming the order passed by the Collector, Surendranagar dated 25.2.89 and being aggrieved and dissatisfied with the same, the petitioners have preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri B.J.Jadeja, learned advocate appearing on behalf of the petitioner has made number of submissions on merits including the aspect of exercise of the powers by the Collector after unreasonable period. He has submitted that order passed by the Deputy Collector, Dhanghadra dated 29.5.1973 came to be taken under suo motu review / revision by the Collector, Surendranagar under Section 211 of the Bombay Land Revenue Code after a period of nine years and in the mean time so many

transactions had taken place between the parties and therefore, the Collector, Surendranagar ought not to have set aside the orders passed by the Deputy Collector, Dhaghadra dated 29.5.1973. At this stage itis pertinent to note that in view of the fact that the present special civil application can be allowed on the substantive ground of exercise of powers by the Collector, Surendranagar after unreasonable period, the order is vitiated, this Court is not inclined to go into other submissions on the merits of the case.

4. Shri P.D.Bhate, learned AGP is also not in position to satisfy this Court and/or explain before this Court with regard to the delay caused in taking the order of the Deputy Collector under suo moto revision after period of nine years. However, he has submitted that in view of the subsequent proceedings and the order of remand passed by the Secretary (Appeals) delay has taken place and therefore, it is requested to dismiss the present special civil application, more particularly, contending interalia that the transactions were in breach of Section-54 of

the Gharkhed Ordinance and therefore, he has submitted that the Collector, Surendranagar has rightly quashed and set aside the order passed by the Deputy Collector, Dhaghadra dated 29.5.73 which is now confirmed by the Secretary (Appeals), Revenue Department, State of Gujarat and therefore, it is requested to dismiss the present special civil application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the Deputy Collector, Dhangdhadra passed the order on 29.5.1973 discharging the notices issued for the breach of Section-54 of the Ordinance. It is also not in dispute that the said order came to be taken under suo motu revision / review by the Collector after a period of almost nine years i.e in the year 1981-82. As held by the Hon'ble Supreme Court in RAGHAV NATHA V. G.F. MANKODI, COMMISSIONER, RAJKOT DIVISION AND OTHERS, VI GLR 34 as well as the recent decision of the Division Bench of this Court in case of VALJIBHAI JAGJIVANBHAI V.

STATE OF GUJARAT reported in 2005 (3) GLH 34, the suo motu powers are required to be exercised within some reasonable time and if the proceedings are initiated after unreasonable period, the proceedings are vitiated. Considering the aforesaid judgments of the Hon'ble Supreme Court as well as this Court and in other catena of decisions taking the view that exercise of powers after unreasonable period, vitiates the proceedings, in my opinion, considering the case on hands, when the Collector, Surendrangar exercised the powers after period of nine years, it cannot be said that the powers were exercised within reasonable period. Under the circumstances, exercise of powers by the Collector after nine years is held to be unreasonable and the same has vitiated the entire proceedings. Under the circumstances, the order passed by the Collector, Surendranagar dated 25.2.1989 in setting aside the order passed by the Deputy Collector, Dhangadhra dated 29.5.73 as well as the order passed by the Deputy Secretary (Appeals) in confirming the order said order cannot be sustained and the same are required to be quashed and set aside.

7. For the reasons stated hereinabove, the petition succeeds. The judgment and order passed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat dated 1.9.1990 / 30.1.1990 passed in Revision Application SRD No.1 of 1989 as well as the order passed by the Collector, Surendranagar dated 25th February, 1989 passed in Gharkhed Ordinance Revision Application No.2 of 1986 are hereby quashed and set aside.

8. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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